

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

MICHIGAN LABORERS' DISTRICT
COUNCIL, AN AFFILIATE OF THE
LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, AFL-CIO

Case 07-CD-221111

and

RAM CONSTRUCTION SERVICES OF
MICHIGAN, INC.

and

LOCAL 324, INTERNATIONAL UNION OF
OPERATING ENGINEERS, AFL-CIO

and

LOCAL 2, INTERNATIONAL UNION OF
BRICKLAYERS & ALLIED CRAFTWORKERS
(BAC), AFL-CIO

and

LOCAL 149, UNITED UNION OF ROOFERS
WATERPROOFERS & ALLIED WORKERS, AFL-CIO

and

MICHIGAN REGIONAL COUNCIL OF
CARPENTERS, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
AFL-CIO

LOCAL 324 REQUEST FOR SPECIAL PERMISSION TO APPEAL RULING ON

SUBPOENA

Pursuant to §102.65(c) of the Board's Rules and Regulations, and other applicable measures, being in receipt of RAM Construction Services, Inc. Petition to Revoke Subpoena and following Hearing Officer Steven Carlson's ruling granting said Petition to Revoke Subpoena,

Local 324 of the International Union of Operating Engineers requests special permission to appeal the Hearing Officer's August 07, 2018 ruling regarding Local 324's August 03, 2018 Subpoena Duces Tecum B-1-121HH8P, on the following grounds:

Central to the subject 10(k) hearing is the assignment of the operation of power-driven and power-generating work to other trades, particularly the Laborers. Local 324 has consistently claimed this work, and historically, the situation has been rectified by getting an Operator to perform the work, notwithstanding limited and sporadic equipment use which has never been an issue between the parties. Until this time, and the formal reassignment of the work to the laborers, the situation has always been resolved. Now, the Operators work has been formally assigned to the laborers, and Local 324 contends that this is due to the laborers being a cheaper trade. In contrast, the Employer alleges that there is not enough equipment work to support an Operator in a composite crew setting. Local 324 subpoenaed the exact evidence which would prove or disprove that allegation, and was denied such.

Thus, the hearing officer abused his discretion under the Board's Rules and Regulations Sec. 102.66(f). The evidence requested directly related to the matter under investigation or in question in the subject 10(k) proceedings. The hearing officer did not appropriately consider Local 324's need for material related to specific conduct at issue in the 10(k) hearing. Specifically at issue is the Employer's use of "composite crews" and their use of power-driven and power generating equipment. Pursuant to §102.66(a) of the Board's Rules and Regulations, "Any party shall have the right...to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation." The production of the subpoenaed material is relevant to Local 324's exact contentions that there is significant use of power-driven and power generating equipment with RAM, which falls under

the work jurisdiction provisions of the Collective Bargaining Agreement applicable to Local 324 & RAM Construction. The subpoenaed equipment logs illustrate the hours used on each machine weekly, at each job site. Such usage and conduct is directly relevant to the 10(k) proceedings, as the factors evaluated by the Board include: (1) work-jurisdiction provisions in the parties' collective-bargaining agreements, (2) to whom the work is currently assigned, (3) the employer's preference and past practice, and (4) economy and efficiency of operations. Thus, Local 324 respectfully requests the ability to appeal the Hearing Officer's ruling granting the Employer's Petition to Revoke Subpoena.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2018, I served the foregoing paper on all parties of record by email.

s/Jessica L. Schuhrke
Jessica L. Schuhrke, P77561

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